

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

Case No. A-6128

PETITION OF MOHAMMAD R. SETOODEH
(Hearing held April 26, 2006)

OPINION OF THE BOARD
(Effective date of Opinion, June 1, 2006)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-1.326(a)(2)(C). The existing accessory structure (detached garage) requires a variance of four (4) feet as it is within one (1) foot of the side lot line. The required setback is five (5) feet.

Francis Koh, Esquire, represented the petitioner at the public hearing.

The subject property is Lot P26, Block 3, Glen Cove Subdivision, located at 5127 Saratoga Avenue, Bethesda, Maryland, 20816, in the R-60 Zone (Tax Account No. 00657924).

Decision of the Board: Requested variance **denied.**

EVIDENCE PRESENTED TO THE BOARD

1. The under-construction detached garage requires a four (4) foot variance.
2. Mr. Koh stated that the petitioner started the renovation of the existing detached garage and that the structure collapsed and now requires a variance to remain at the same location. Mr. Koh stated that the subject property is located on a pie-shaped block and that the lot is very narrow and topographically constrained. Mr. Koh stated that it would be impossible to construct a garage elsewhere on the lot. Mr. Koh stated that the rear yard of the subject property is steeply sloped and that its topography is the highest among the other lots. Mr. Koh stated that only one other lot shares the same sloping topography as the subject property.

3. The petitioner testified that the garage was located on the property when he purchased the house and that it had been in need of repair. The petitioner testified that the garage later collapsed and that it was rebuilt. The petitioner testified that the existing garage had a lot of rotten pieces in the wall and that the old studs were taken out and new studs were installed. The original structure received a permit for renovation, when the structure collapsed and had to be rebuilt, the Department of Permitting (DPS) determined that this would be considered new construction and would require a variance to be rebuilt.
4. Mr. Koh stated that the renovation of the existing garage does not change the size, the foundation, or will extend beyond the footprint of the prior structure. Mr. Koh stated that the renovation did change the siding to match the house and the front façade of the garage. Mr. Koh stated that the required setbacks for an accessory structure prevent the petitioner from building a garage in the front section of the property and that there is no other location to build a garage on the lot.
5. Mr. Koh stated that the subject property is 50 feet wide and about 180 feet in length, and that the lot is 9,000 square feet. Mr. Koh stated that the subject property is a narrow lot and that the other properties on the street are all about the same width. Mr. Koh stated that the neighboring properties are all relatively flat and that the slope of the rear yard of the subject property ranges from about 6 to 8 feet in grade. See Exhibit 4 [site plan].

FINDINGS OF THE BOARD

Based upon the petitioner's binding testimony and the evidence of record, the Board finds that the variance must be denied. The requested variance does not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a) as follows:

(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.

The Board finds that the petitioner's lot does have a gentle slope that is different from the neighboring properties, but that the degree of change in the topography on the subject property does not constrain development or construction on the lot. The Board finds that the characteristics of the petitioner's lot are not

“conditions peculiar to a specific parcel of property” that cause the strict application of the Zoning Ordinance to have a disproportionate impact on the subject property.

The Board notes that the subject property is deeper and substantially exceeds the minimum lot size for the zone, and that the lot is 50% larger than most of the lots in the immediate area. See Exhibit No. 10(a) [zoning vicinity map].

The petition does not meet the requirements of Section 59-G-1.3(a) and the Board did not consider the other requirements in that section for the grant of a variance. Accordingly, the requested variance of four (4) feet from the required five (5) foot side lot line setback for the construction of an accessory structure/detached garage is denied.

The Board adopted the following Resolution:

On a motion by Caryn L. Hines, seconded by Donna L. Barron, with Allison Ishihara Fultz, Chair, in agreement, and with Angelo M. Caputo and Wendell M. Holloway, in opposition, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 1st day of June, 2006.

Katherine Freeman
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-

4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.